

Gary Peller
600 New Jersey Avenue, NW
Washington, DC, 20001
(202) 662 9122
*Counsel for Celestine Elliot, Lawrence Elliot,
and Berenice Summerville, Appellants*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re	:	Chapter 11
	:	
MOTORS LIQUIDATION COMPANY, <i>et</i>	:	Case No.: 09-50026 (REG)
<i>al.</i>,	:	
f/k/a General Motors Corp., <i>et al.</i>	:	(Jointly Administered)
Debtors.	X	
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CELESTINE ELLIOT, <i>et al.</i>,	:	Case No.: 1:14-cv-08382
	:	(S.D.N.Y.) (JMF)
Plaintiffs,	:	
	:	
v.	:	
	:	
GENERAL MOTORS LLC, <i>et al.</i>,	:	
	:	
Defendants.	X	

**ELLIOTT PLAINTIFFS/APPELLANTS' STATEMENT OF THE ISSUES AND
DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL**

Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, Lawrence Elliot, Celestine Elliot, and Berenice Summerville, Plaintiffs in their action pending before the United States District Court for the Southern District of New York, 1:14-cv-08382 (JMF), and appellants here ("the *Elliot* appellants"), respectfully submit this statement of issues to be presented on appeal and designation of items to be included in the record. The *Elliot* Appellants appeal from the Judgment [Docket No. 13177] entered by the United States Bankruptcy Court for the Southern District of New York *in re*

Motors Liquidation Company et al, 09-50026 (GER), on June 1, 2015, authorizing General Motors LLC's ("New GM") Motion to Enforce the Court's July 5, 2009 Sale Order and Injunction, of General Motors Corporation's assets ("Old GM"); Decision with Respect to Elliott Plaintiff's No Stay Pleading and Related Motion to Dismiss for Lack of Subject Matter Jurisdiction [Docket No. 12815]; Endorsed Order Denying Plaintiffs' Motion to Alter or Amend and Denying Plaintiffs' Motion for Abstention [Docket No. 12993]; Decision on the Motion to Enforce 2009 Sale Order and Injunction [Docket No. 13109]; and related rulings [Docket Nos. 12740, 12763, 12771, 12792].

STATEMENT OF ISSUES PRESENTED ON APPEAL

1) Did the Bankruptcy Court err in concluding that it had subject matter jurisdiction to enjoin the prosecution of the *Elliott* appellants' lawsuit against non-debtor New GM, when appellants assert direct, non-successor liability claims for injuries caused by breaches of independent, non-derivative duties New GM owed appellants, claims having no conceivable impact on the *res* of debtor Old GM?

2) Did the Bankruptcy Court err in enforcing the 2009 Sale Order and Injunction to bar the *Elliott* appellants from pursuing claims involving non-ignition switch hazards, even though they did not have the notice and opportunity to be heard required by the Due Process Clause before they may be precluded from asserting wholly *in personam* and non-successor liability claims against New GM based on its alleged breaches of independent, non-derivative duties?

3) Did the Bankruptcy Court err in requiring that the *Elliott* appellants demonstrate prejudice, in addition to a denial of Constitutionally required notice and opportunity to be heard, in order to be free from preclusion by the 2009 Sale Order and

Injunction barring them from pursuing independent, non-derivative claims about which they had no notice or opportunity to be heard prior to the entry of the Order?

4) Did the Bankruptcy Court err in applying its Judgment to the *Elliott* appellants in violation of their Due Process rights, by not according them an opportunity to be heard in the proceedings regarding the issues resolved by the Judgment?

5) Did the Bankruptcy court err by treating counsel representing other parties as representatives of the *Elliott* appellants, and thereby denying appellants their right to be heard under the Due Process Clause?

6) Did the Bankruptcy Court err in construing the 2009 Sale Order and Injunction to encompass the *Elliott* appellants' independent, non-derivative claims against New GM for its own wrongdoing in light of textual and contextual interpretative evidence dictating a contrary reading?

7) Was the Bankruptcy Court's construction of the 2009 Sale Order and Injunction to encompass independent, non-derivative claims against New GM for its own wrongdoing so unexpected, that even those who received notice of the proceedings would not have had reasonable notice that such claims were to be barred?

8) Did the Bankruptcy Court err in issuing a successive injunction in a contested matter to enforce its earlier injunction?

9) Was New GM's exclusive remedy for enforcing its earlier injunction to seek contempt proceedings against the *Elliott* appellants?

10) Did the Bankruptcy Court overstep its jurisdiction by ordering the *Elliott* appellants to take prejudicial action in their lawsuit pending before a judge appointed pursuant to and exercising authority granted under Article III of the Constitution?

11) Did the Bankruptcy Court overstep its jurisdiction by ordering the *Elliott* appellants to alter their pleadings asserting state law claims pending before a judge appointed pursuant to and exercising authority granted under Article III of the Constitution?

12) Did the Bankruptcy Court err by applying its 2009 Sale Order and Injunction barring Ms. Summerville's claims based on New GM's unsupported assertion that her 2010 model car may contain parts made by Old GM?

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

Appellant hereby designates the following items to be included in the record on appeal. Documents under 09-bk-50026 (REG) have been filed with the Bankruptcy Court under the corresponding Bankruptcy Court Docket numbers.

Item #	Date	Bankruptcy Court Docket #	Name
1	06/01/2009	1	Voluntary Petition for Relief Under Chapter 11 of Title 11 of the United States Code
2	06/01/2009	92	Motion to Approve Procedures for Sale of Property
3	06/01/2009	158	Order Granting Debtor's Motion for (I) Waiving Requirement to File List of Creditors and (II) Approving Form and Manner of Notifying Creditors of Commencement
4	06/02/2009	274	Order Granting Motion to Approve Procedures for Sale of Property
5	07/05/2009	2968	Order Authorizing Sale of Property and Granting Related Relief
6	07/01/2010	6237	Order Granting Defendant General Motors LLC's Motion Enforcing 363 Sale Order
7	04/21/2014	12619	Groman Plaintiff's Adversary Complaint Against Defendant General Motors LLC
8	04/21/2014	12620	Defendant General Motors LLC's Motion to Enforce the Court's July 5, 2009 Sale Order and Injunction
9	04/21/2014	12621	Cover Page and Exhibits to Defendant General Motors LLC's Motion to Enforce the Court's July 5, 2009 Sale Order and Injunction
10	04/22/2014	12627	Endorsed Order Granting Defendant General Motors LLC's Request for a Conference for Determining Procedures
11	04/22/2014	12629	Objection to Motion of General Motors LLC To Enforce the Courts July 5, 2009 Sale Order and Injunction Filed on Behalf of

			Plaintiffs Benton, Ratzlaff, Barker, Heuler, McConnell, Onofre, and Satele
12	05/16/2014	12697	Scheduling Order Regarding (I) Defendant General Motors LLC's Motion to Enforce the 2009 Sale Order and Injunction, (II) Objection Filed By Certain Plaintiffs In Respect Thereto, and (III) Adversary Proceeding No. 14-01929.
13	06/24/2014	12735	Supplemental Response by Defendant General Motors LLC in Connection with Stay Procedures Set Forth in the Court's May 16, 2014 Scheduling Order
14	06/30/2014	12740	Letter from Daniel Horal, Counsel for Elliott Plaintiffs, Regarding the July 2 Hearing and Endorsed Order
15	07/01/2014	12748	Defendant General Motors LLC's Response to Horal Letter Regarding the July 2 Hearing and Endorsed Order
16	07/03/2014	12761	Letter from Daniel Horal, Counsel for Elliott Plaintiffs, Requesting Additional Opportunity to Be Heard
17	07/08/2014	12763	Order Staying and Restraining Lawrence and Celestine Elliott and Counsel from Further Proceeding with their Ignition Switch Action
18	07/08/2014	12764	Order Granting Defendant General Motors LLC's Motion to Establish Stay Procedures for Newly-Filed Ignition Switch Actions
19	07/10/2014	12766	Letter from Gary Peller, Counsel for Elliott Plaintiffs, Requesting Expedited Consideration of Request Herein that the Court Vacate or Suspend Paragraphs 2-4 of its 2014 Order Staying and Restraining Plaintiffs from Further Proceeding with their Ignition Switch Action
20	07/11/2014	12768	Letter from Arthur Steinberg, Counsel for Defendant General Motors LLC, Responding to Gary Peller's Letter
21	07/11/2014	12769	Letter from David Horal, Counsel for Elliott Plaintiffs, to Correct and Clarify Statements Made by Arthur Steinberg in Letter Responding to Gary Peller
22	07/11/2014	12770	Supplemental Scheduling Order Regarding (I) Defendant General Motors LLC's Motion to Enforce the 2009 Sale Order and Injunction, (II) Objection Filed By Certain Plaintiffs In Respect Thereto, and (III) Adversary Proceeding No. 14-01929.
23	07/11/2014	12771	Endorsed Order Denying Elliott Plaintiffs' Request that the Court Vacate or Suspend Paragraphs 2-4 of its 2014 Order staying and Restraining Plaintiffs from Further Action Proceeding with their Ignition Switch Action
24	07/11/2014	12772	Elliott Plaintiffs' No Stay Pleading and Motion for Order of Dismissal for Lack of Subject Matter Jurisdiction and for Related Relief
25	07/14/2014	12775	Elliott Plaintiffs' Notice of Appeal from June 30, July 8 and July 11 Orders
26	07/18/2014	12777	Letter of Notice filed by David Horal on Behalf of Elliott Plaintiffs
27	07/18/2014	12778	Elliott Plaintiffs' Notice of Withdrawal of Appeal
28	07/21/2014	12782	Defendant General Motors LLC's Response to Elliott Plaintiffs' No Stay Pleading

29	07/23/2014	12783	Letter from Gary Peller, Counsel for Elliott Plaintiffs, to J. Gerber regarding Elliotts' Jurisdictional Claims
30	07/24/2014	12785	Letter from Arthur Steinberg, Counsel for Defendants General Motors LLC, Regarding Elliotts' Jurisdictional Claims
31	07/28/2014	12788	Letter from Gary Peller, Counsel for Elliott Plaintiffs, in Response to Steinberg Letter Regarding Elliotts' Jurisdictional Claims
32	07/28/2014	12789	Defendant General Motors LLC's Response to the Peller Letter Regarding Elliott Plaintiffs' Jurisdictional Claims
33	07/30/2014	12792	Endorsed Order Denying Elliott Plaintiffs' Request to take No Stay Pleading off Calendar
34	08/01/2014	12807	Defendant General Motors LLC's Motion to Enforce July 5, 2009 Sale Order and Injunction Against Plaintiffs in Pre-Closing Accident Lawsuits
35	08/01/2014	12808	Defendant General Motors LLC's Motion to Enforce July 5, 2009 Sale Order and Injunction Against Monetary Relief Actions, Other than Ignition Switch Actions
36	08/06/2014	12815	Decision Denying Elliott Plaintiffs' No Stay Pleading and Motion to Dismiss
37	08/07/2014	12820	Defendant General Motors LLC's Proposed Order Denying the Relief Requested in the Elliott Plaintiffs' No Stay Pleading and Motion for Order of Dismissal for Lack of Subject Matter Jurisdiction
38	08/08/2014	12822	Elliott Plaintiffs' Notice of Objection to Proposed Order and Proposed Counter-Order
39	08/08/2014	12826	Identified Parties' Agreed Upon and Disputed Stipulations of Fact
40	08/08/2014	12827	Letter from Arthur Steinberg, Counsel for Defendant General Motors LCC, Regarding Agreed Upon and Disputed Stipulations of Fact
41	08/12/2014	12828	Elliott Plaintiffs' Supplemental Notice of Objections to Proposed Order and Proposed Counter-Order
42	08/13/2014	12834	Order Denying Relief in Elliott Plaintiffs' No Stay Pleading and Motion for Order of Dismissal and Related Relief
43	08/12/2014	12836	Endorsed Order finding Elliott Plaintiffs' Supplemental "Notice of Objections" procedurally inappropriate
44	08/13/2014	12839	Elliott Plaintiffs' Notice of Appeal from Order Denying Relief in No Stay Pleading and Motion for Order of Dismissal
45	08/25/2014	12871	Elliott Plaintiffs' Motion to Alter or Amend the Order Denying Relief in No Stay Pleading and Motion for Order of Dismissal and Related Relief
46	08/25/2014	12872	Elliott Plaintiffs' Motion for an Order of Abstention for Claims Against Non-Debtor General Motors LLC, for Lack of Jurisdiction
47	09/05/2014	12882	Endorsed Order Placing Elliott Plaintiffs' Motion for an Order of Abstention for Claims Against Non-Debtor General Motors LLC, for Lack of Jurisdiction on Hold
48	09/19/2014	12920	Defendant General Motors LLC's Omnibus Response to I. Plaintiffs' Motion for an Order of Abstention and II. Plaintiffs'

			Motion to Alter or Amend
49	11/05/2014	12981	Defendant General Motor LLC's Opening Brief on Threshold Issues Concerning its Motions to Enforce Sale Order and Injunction
50	11/10/2014	12993	Endorsed Order Denying Plaintiffs' Motion to Alter or Amend and Denying Plaintiffs' Motion for Abstention
51	11/11/2014	13001	Transcript Regarding Hearing Held on July 2, 2014, Regarding No Stay Pleadings
52	11/21/2014	13002	Elliott Plaintiffs' Amended Notice of Appeal
53	11/21/2014	13003	Transcript Regarding Hearing Held August 5, 2014, Regarding Elliott Plaintiffs' No Stay Pleading Pursuant to the Courts Scheduling Orders and Motion for Order of Dismissal for lack of Subject Matter Jurisdiction
54	11/24/2014	13005	Elliott Plaintiffs' Motion for Leave to Appeal Injunctive Order
55	12/02/2014	13015	Stipulation Order Extending Answer Deadline for Motions for Leave to Appeal Injunctive Orders
56	12/16/2014	13021	Designated Counsel for Certain Pre-Closing Accident Plaintiffs' Responsive Brief on Threshold Issues Concerning Motions to Enforce the Sale Order and Injunction
57	12/16/2014	13025	Designated Counsel for Certain Plaintiffs' Opposition Brief on Threshold Issues Concerning Motions to Enforce the Sale Order and Injunction
58	12/16/2014	13028	Groman Plaintiffs' Opposition Brief Regarding New GM's Opening Brief's "Fraud on the Court Legal Standard"
59	12/17/2014	13034	Defendant General Motor LLC's Consolidated Objections to the Elliot's Plaintiffs' Motion for Leave to Appeal Preliminary Stay Orders
60	01/13/2015	13044	Administrative Order Regarding Oral Argument and Related Matters
61	01/16/2015	13048	Defendant General Motors LLC's Reply Brief on Threshold Issues Concerning Motions to Enforce
62	01/28/2015	13059	Endorsed Order Granting Defendant General Motor LLC's Proposed Oral Argument Sequence
63	01/30/2015	13066	Endorsed Order Regarding Defendant General Motors LLC's Letter Requesting Approval of Argument Sequence and Time Allocation
64	02/13/2015	13086	Defendant General Motors LLC's Notice of Matters Scheduled for Hearing on February 17, 2015
65	04/15/2015	13111	Decision on the Motion to Enforce Sale Order
66	05/12/2015	13136	Letter from Arthur Steinberg, Counsel for Defendant General Motors LLC, Regarding Proposed Judgment in Connection to Decision on Motion to Enforce Sale Order
67	05/12/2015	13137	Letter from Edward S. Weisfelner, Counsel for Certain Plaintiffs, Enclosing Proposed Judgment of Co-Designated Counsel and Counsel for Economic Loss Plaintiffs and Designated Counsel and Counsel for Ignition Switch Pre-Closing Accident Plaintiffs
68	05/13/2015	13143	Letter from Gary Peller, Counsel for Elliott Plaintiffs, Requesting

			Scheduling for Submission of Non-Threshold Issue Objections
69	05/15/2015	13147	Endorsed Order Regarding Letter from Gary Peller, Counsel for Elliott Plaintiffs, Instructing Defendant General Motors LLC to Respond
70	05/21/2015	13153	Letter from Arthur Stenberg, Counsel for Defendant General Motors LLC, Responding to Letter from file by Gary Peller
71	05/21/2015	13154	Letter from Gary Peller, Counsel for Elliott Plaintiffs, Requesting Leave to Respond to Mr. Steinberg's Letter Regarding Non-Threshold Issue Considerations
72	05/27/2015	13161	Endorsed Order Denying Elliott Plaintiffs' Request to Respond to Defendant General Motor's Letter Regarding Additional Objections
73	05/27/2015	13162	Decision Regarding Form of Judgment
74	05/27/2015	13163	Order Regarding Technical Matters Concerning Judgment
75	05/29/2015	13169	Letter from Gary Peller, Counsel for Elliott Plaintiffs, Regarding Court's Order Regarding Technical Matters Concerning Judgment
76	05/29/2015	13171	Letter from Arthur Steinberg, Counsel for Defendant, Regarding Court's Order Regarding Technical Matters Concerning Judgment
77	05/29/2015	13172	Letter from William P. Weintraub, Counsel for Groman Plaintiffs, Regarding Court's Order Regarding Technical Matters Concerning Judgment
78	05/29/2015	13174	Letter from Arthur Steinberg, Counsel for Defendant General Motors LLC, Requesting Provision Staying Certain Appellate Procedures Until Second Circuit Certification
79	06/01/2015	13176	Letter from Arthur Steinberg, Counsel for Defendant General Motor LLC, Responding to Letter filed by Gary Peller Regarding Technical Matters of Judgment
80	06/01/2015	13177	Judgment
81	06/01/2015	13178	Order Certifying Judgment for Direct Appeal to Second Circuit
82	06/01/2015	13179	Elliott Plaintiffs' Amended Notice of Appeal

Dated: June 15, 2015

Respectfully submitted,

/s/ Gary Peller

Gary Peller
Counsel for Celestine Elliot,
Lawrence Elliot, and Berenice
Summerville. Appellants
600 New Jersey Avenue, NW
Washington, DC, 20001
(202) 662 9122
peller@law.georgetown.edu